

## § 266.215

## 24 CFR Ch. II (4–1–08 Edition)

laws and authorities, the HUD Field Office (or other responsible entity through such delegation as may be in effect by regulation hereafter) will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 50 (or as set forth in 24 CFR part 58 for the other responsible entity). These requirements must be completed before HUD may issue the firm approval letter.

(c) *Intergovernmental review.* Intergovernmental review of Federal programs under Executive Order 12372, as implemented in 24 CFR part 52.

(d) *Subsidy layering.* The Commissioner, or Housing Credit Agencies through such delegation as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(e) *Davis-Bacon Act.* The Commissioner shall obtain and provide to the HFA the appropriate Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

[59 FR 62524, Dec. 5, 1994, as amended at 60 FR 16573, Mar. 31, 1995]

## § 266.215 Functions delegated by HUD to HFAs.

The following functions are delegated by HUD to the HFAs:

(a) *Affirmative Fair Housing Marketing Plan (AFHMP).* The HFA will perform information collection, reviews and ministerial activities associated with the review and approval of the AFHMP for all projects. (Enforcement of fair housing and equal opportunity laws is the responsibility of HUD.)

(b) *Labor standards and prevailing wage requirements.* The HFA will perform information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions regarding labor standards, in accordance with § 266.225(e). (Enforcement of Davis-Bacon prevailing wage requirements and labor standards is the responsibility of HUD.)

(c) *Insurance of advances.* In cases involving insured advances, the HFA will approve periodic advances of mortgage insurance proceeds during construction of the project subject to terms specified by the Commissioner.

(d) *Cost certification.* The HFA will perform cost certification functions on each insured loan subject to terms specified by the Commissioner.

(e) *Lead-Based Paint.* The HFA will perform functions related to Lead-Based Paint requirements subject to terms specified by the Commissioner.

## § 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, it will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes “housing for older persons” as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2));

(b) Not discriminate against any family because of the sex of the head of household;

(c) Comply with the Fair Housing Act (42 U.S.C. 3601-3619), as implemented by 24 CFR part 100; titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213), as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f), as implemented by 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958-1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), and implemented by 24 CFR part 107; Executive Order 11246 (3 CFR 1964-1965 Comp., p. 339), as implemented by 41 CFR part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented

by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107), as implemented by 24 CFR part 146; and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

**§ 266.225 Labor standards.**

(a) *Applicability of Davis-Bacon.* (1) All laborers and mechanics employed by contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), where the project meets all of the following conditions:

- (i) Advances for the project are insured under this part;
- (ii) The project involves new construction or substantial rehabilitation; and
- (iii) The project will contain 12 or more dwelling units.

(2) Projects that do not meet these conditions are not subject to Davis-Bacon wage rates except to the extent required as a condition of other Federal assistance to the project.

(b) *Volunteers.* The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70. In applying part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of 29 CFR parts 1, 3 and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute.

(d) *Advances.* (1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the Commissioner's administrative procedures) that the general contractor or

any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant 29 CFR 5.12, issued by the Secretary of Labor.

(2) No advance under any mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be insured under this part unless there is filed with the application for the advance, and no such mortgage shall be insured under this part unless there is filed with the HFA after completion of the construction or substantial rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages determined by the Secretary of Labor to be prevailing in accordance with paragraph (a) of this section.

(e) *Responsibility for enforcement and administration.* The Commissioner retains responsibility for enforcement of labor standards under this section, but the Commissioner may delegate to the HFA information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1, any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. For example, failure of an HFA to supply or ensure inclusion of the proper contract clauses or wage determination in a contract or building loan agreement may require the HFA to fund increased compensation to a contractor as the result of increased wages attributable to incorporation of the proper clauses and wage determination.